IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1980 OF 2006

Suresh M. Goradia & anr. ..Petitioners.

Vs.

The Municipal Corporation of
Greater Bombay & Ors. ..Respondents.

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Mr. R.M. Nakhawa with Mr. V.B. Dhavan for the Petitioners.
Mrs. A.R. Joshi for the BMC.

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CORAM: DR. D.Y. CHANDRACHUD, J.

1st August, 2006.

P.C. :

1. The Petitioners have challenged before this Court an order passed by the Investigating Officer on 22nd March, 2006 in respect of the rateable value of the building in question. The building is situated at 11, Vithalbhai Road, Vile Parle (West). It appears that during the course of the construction, a notice of demolition was issued by the Municipal Corporation which led to the institution of a writ petition before this Court, being Writ Petition 1254 of 2003. A Division Bench of this Court by its order dated 8th July, 2003 admitted the Petition and issued the following interim directions :

> "In the meanwhile, the respondent No.1 shall not implement the notice dated 30th April, 2003. The petitioners are also restrained from developing the property in question further in any manner whatsoever. They are also restrained from creating any third party right or interest in the said property and are directed to maintain status quo in all respects until the decision in the writ petition."

2. The main ground on which the present petition was instituted is that according to the Petitioners, the Municipal Corporation cannot proceed to make an assessment of the rateable value in view of the interim order passed by the Division Bench. Fairly at the hearing of this Petition, the wider submission has not been pressed and correctly so. The order of the Division Bench restrains the Petitioners from further developing the property; from creating any third party rights or interests and directs them to maintain the status quo in all respects. In so far as the Municipal Corporation is concerned, it was directed not to implement its notice dated 30th April, 2003 by which the building was proposed to be demolished. Therefore, clearly there is no order that had prevented the Municipal Corporation from carrying out the assessment in accordance with law. The order of status

quo is in relation to the Petitioners. Since the Corporation was restrained from demolishing the property, the Division Bench ordered the Petitioners to maintain the status quo on their part and not to create any third party interests or develop the property any further.

3. However, the submission which has been urged at the hearing of this proceeding is that before the Investigating Officer the grievance of the Petitioners was that the property has been assessed erroneously as land under construction and the assessment had been paid all along under protest. The Investigating Officer had proposed to enhance the rateable value from Rs.58250/- to Rs.95,510/-. The Petitioners contended that the building was incapable of occupation or of beneficial and enjoyment and there was neither any water connection nor any electricity. Moreover, the building could not be put to use in view of the interim order passed by the Division Bench. The Deputy Superintendent, as the Investigating Officer recorded, also confirmed that the building is totally vacant and is incapable of any beneficial use in the absence of any water connection and electricity and it could not be put to any use in view of the

restraining order of this Court. Having regard to this factual situation the Investigating Officer did not consider it appropriate and proper to increase the rateable value from Rs.58,250/- to Rs.95,510/- per annum. He has therefore restored the rateable value to Rs.58,250/-. However, he has granted liberty to the Petitioners to make a further representation before the concerned authority for a further reduction of the rateable value “by taking into consideration the abandoned building site”. There is merit in the contention urged on behalf of the Petitioners that it is for the Investigating Officer to hear the objection of the Petitioners to the determination of the rateable value and the Investigating Officer has acted outside his jurisdiction in requiring the Petitioners to submit a representation to the concerned authority. Who is the concerned authority is not spelt out. But that apart, the power to hear objections before determining the rateable value is a quasi judicial power which is conferred upon the Investigating Officer. It is for that officer to hear the objections and take a final decision. The Petitioners cannot be relegated to some other remedy, particularly when it is not statutorily provided for under the law.

4. In these circumstances, the impugned order of the

Investigating Officer, to the extent to which it directs the Petitioners to submit a further representation to the concerned authority for a reduction in the rateable value from Rs.58,250/- to a lower figure consistent with the existing position of the property is quashed and set aside. The matter to this extent shall stand restored to the Investigating Officer who shall pass a final order on a representation that has been submitted by the Petitioners after giving to the Petitioners an opportunity of being heard. The Petitioners would be at liberty to file a supplementary representation before the Investigating Officer within a period of two weeks from today. The Investigating Officer shall expedite the disposal of the representation and take a final decision within a period of three months from today. The Petition is disposed of.